

**ASSETS OF COMMUNITY VALUE AND LOCAL HERITAGE LIST
COMMITTEE held at COUNCIL CHAMBER - COUNCIL OFFICES, LONDON
ROAD, SAFFRON WALDEN, CB11 4ER, on TUESDAY, 25 JANUARY 2022 at
2.00 pm**

Present: Councillor M Sutton (Chair)
Councillors J Evans, R Freeman and P Lees

Officers in attendance: C Gibson (Democratic Services Officer), J Hill (Planning Policy Officer), A Lindsell (Democratic Services Officer) and E Smith (Solicitor)

Public Speakers: Councillor L Pepper (as a member of the public), D Tunmer (C Tunmer also in attendance) and Councillor S Sidgwick (Chair of Little Easton Parish Council).

ACV18 ELECTION OF A CHAIR

Councillor Lees nominated Councillor Sutton for Chair. This was seconded by Councillor Freeman.

RESOLVED that Councillor Sutton be elected Chair.

ACV19 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

Apologies for absence were received from Councillor Pepper who attended the meeting virtually as a member of the public.

There were no declarations of interest.

ACV20 MINUTES OF THE PREVIOUS MEETING

The minutes of the meeting held on 17 August 2021 were approved.

ACV21 NOMINATION OF THE STAG, LITTLE EASTON, AS AN ASSET OF COMMUNITY VALUE

The Solicitor provided details of what construes to be an Asset of Community Value and the related process for nominating an asset for the benefit of the public.

The Planning Policy Officer presented a report asking Members to consider the nomination of The Stag, Little Easton, as an Asset of Community Value (AoCV). She outlined the necessary criteria that needed to be established for an asset to be considered as an AoCV. The nomination had previously been deferred at the Committee meeting on 21 June 2021 following the discovery of nineteen emails

that had not been taken into consideration as they had been submitted to an unchecked email address.

She explained that she considered there to be insufficient supporting evidence in sixteen of the nineteen emails supporting the application which had failed to record accurately the non-ancillary usage of The Stag by the groups.

The Planning Policy Officer advised that she recommended rejection of the nomination due to the insufficient supporting evidence relating to the non-ancillary usage of The Stag.

Members discussed;

- The submission of thirteen activities as evidence relating to non-ancillary use of The Stag presented to Members, particularly as this nomination was originally considered prior to changes made to the nomination process adopted by Cabinet in July 2021.
- The need to acknowledge that AoCV's should not be used to prevent sustainable development.
- The need to adopt a common sense approach when deciding the tests that members should consider and to consider each nomination on its own merits.
- The mental health benefits of groups such as those submitted as evidence of non-ancillary use of the site, particularly as the only public house in the village.
- The need for the documentation provided to the public to enable the public to understand what they are required to submit.
- The village's previous significant fundraising achievement.
- The recent approval of a planning application for 44 dwellings and 3 ancillary units to the rear of this site.
- The sale of local produce from The Stag, with the proceeds going to charity.
- The proposed non-ancillary use of The Stag as a Post Office.

The Planning Policy Officer said that several of the emails received were almost straight copies of the nomination form and reiterated that care should be taken when considering whether the specific evidence of non-ancillary use was sufficient.

The Parish Council Representative spoke in support of the nomination.

The freeholder re-read his presentation from the adjourned AoCV meeting and requested rejection of the application as he believed that the evidence submitted was "exaggerated and contrived" in an attempt to prevent the now approved proposed development to the rear of the site.

The freeholder confirmed that he was willing to grant a six year lease of the premises to the licensee.

Members of the public left the meeting and the Committee retired to make its decision at 3.10pm.

DECISION NOTICE – THE STAG PUBLIC HOUSE, LT EASTON

The matter before the Committee today is a request, known as a nomination, that the Stag Public House in Little Easton be placed upon Uttlesford District Council's list of Assets of Community Value (ACV). The nomination is made by Little Easton Parish Council and the landowner, David Tunmer, objects. This matter previously came before this Committee in June 2021 and was deferred as a bundle of email correspondence supporting the application came to light in an irregularly monitored inbox. Thereafter the membership of this Committee changed and we have heard the matter de novo this afternoon.

The Localism Act 2011 introduces a concept of an 'Asset of Community Value' (ACV). Section 87 of the Localism Act places a duty of Local Authorities to 'maintain a list of land in its area that is land of community value'.

An Asset is of community value if (in the opinion of the local authority) either:

- an actual current use of the building or other land, that is not an ancillary use, furthers the social wellbeing or social interests of the local community; and
- it is realistic to think that there can continue to be non-ancillary use of the building or other land, which will further (whether or not in the same way) the social wellbeing or social interests of the local community;

or

- there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or social interests of the local community; and
- it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.

The Act states that "social interests" "includes (in particular) each of the following – (a) cultural interests, (b) recreational interests and (c) sporting interests.

Assets of Community Value are buildings or land which involve the physical use by the community and include for example a village shop, pub, community centre, allotment or recreation ground.

In arriving at our decision we are required to answer the following questions :

- a) whether there is a valid nomination;

- b) whether the use of the building (current or recent past) furthers the social wellbeing or social interests of the community;
- c) whether it is realistic to think that in the next 5 years the building could be used to further the social wellbeing or social interests of the community.

In considering these questions, we need to consider the principal, rather than ancillary, uses of the building. The legislation makes this clear.

If we conclude that the answers to these questions are “yes”, then the building should be included in the list of ACV’s even if it is privately owned. The rights of the owner are a material factor and they have a right of review and appeal elsewhere. However, caselaw is clear is one additional question we need to consider in the case of public houses is even if the application site is the only public house in a village, and/or if it is in reality a restaurant and that people only go there to eat, then without collective activities this is insufficient foundation for a listing.

We have taken into account the provisions of the legislation, the Council’s policy, and such case law as there is in the area. There is recent case law, both in terms of decisions of the Planning Inspectorate and of the First Tier Tribunal that makes it clear that the prevention of sustainable development is not a legitimate reason for nominating a site to the AVC list. A successful nomination is not a species of “listing lite”, gives no protection against development and lasts for five years only.

What it does do is give community groups, as defined in the legislation, a window of opportunity to make a bid for the asset should it come on the market for sale, and some sales – disposals – are exempt. It does not give the right to force a sale, any purchase by one of the prescribed groups must be at market value and the landowner can refuse to sell to the community group. He or she can also withdraw the premises from community use and this has been confirmed by the Court of Appeal.

We have had the opportunity of reading a detailed officer’s report in this case, a copy of which has been served on the Parish Council and upon the landowner. We have also heard from Ms Hill, the Case Officer, from Cllr Sidwick on behalf of the nominator and from the landowner. We have also been addressed via Zoom by a member of the public.

Ms Hill spoke very eloquently to her report. She presented us with both the materials available in June 2021, namely a modest bundle of photographs, and the application form and site plan completed by the Parish Council, setting out, among other things details of the groups and activities that took place at the Stag (mainly) pre-covid. We have also considered the bundle of correspondence that was not before the June 2021 Committee and Ms Hill has very helpfully provided us with a table, contained within her report, analysing this.

Most of the correspondence is in support of the application and we refer to the analysis of it in the report. We must be satisfied, on a balance of probabilities, that collective activities are or have been undertaken there regularly as set out in

the nomination, and, in these difficult times, evidence that those activities will resume post covid. We are satisfied, again on a balance of probabilities, that they will.

Furthermore, on 19th January 2022 planning permission was granted for up to 44 dwellings and three employment units on the field behind this site and the occupiers of those new buildings may well support the public house as a commercial business.

There are a number of things we may not take into account in arriving at our decision. One of these is the impact our decision may have on the value of the property, and nor may we consider the question of what compensation, if any, might be payable in respect thereof.

We have also heard from the landowner, Mr Tunmer. He opposes this application, but proposes to continue support the licensee of the premises including by the grant him a six year lease commencing in February 2022. This is for a period longer than the duration of the initial registration. He also concedes that the projected new development is likely to have a positive impact upon the viability of the Stag.

We therefore accept the nomination and direct that the Stag, Duck Street, Little Easton, be placed on the Council's Register of Assets of Community Value for a period of five years. We do so for the following reasons:-

1. We accept that as of the date of the submitting of the nomination sufficient evidence has been adduced by the nominator from members of the community as to pre-covid and current use of the premises other than as a public house/restaurant, such as to satisfy us that that usage is not merely ancillary to their use of the premises as a public house, and that such usage furthers the social wellbeing or social interests of the local community: and
2. We have heard from the freeholder, Mr Tunmer, that he remains willing to grant a fresh six year lease of the premises to the licensee of the pub business and this is sufficient for us to conclude that there is a realistic prospect that during the next five years there will continue to be non-ancillary usage of the premises that would further (whether or not in the same way as previously) the social wellbeing or social interests of the local community.

The landowner has a right to a review of this decision and will receive a letter from the Legal Department explaining this. In the meantime, the Stag will be entered onto Uttlesford's list of Asset of Community Value.